

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 24-21061-CIV-MARTINEZ-SANCHEZ

CLOCK9NINE LLC,

Plaintiff,

v.

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A,"

Defendants.

/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS MATTER was referred to the Honorable Eduardo I. Sanchez, United States Magistrate Judge, for a Report and Recommendation ("R&R") on Plaintiff's Motion for Preliminary Injunction (the "Motion"), (ECF No. 12.) Judge Sanchez filed an R&R recommending that the Motion be granted. (ECF No. 36.) The Court has reviewed the R&R, the Motion, the entire record, and applicable law, and notes that no objections have been filed.

After careful consideration, it is hereby **ORDERED AND ADJUDGED** that United States Magistrate Judge Sanchez's R&R, (ECF No. 36), is **AFFIRMED** and **ADOPTED**. Accordingly, Plaintiff's Motion, (ECF No. 12), is **GRANTED** as follows:

1. Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are hereby restrained and enjoined until further Order of this Court:

- a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing or using Plaintiff's Copyrighted Photographs or confusingly similar images, other than those actually manufactured or distributed by Plaintiff; and
- b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by Plaintiff, bearing and/or using Plaintiff's Copyrighted Photographs or

confusingly similar images; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing and/or using Plaintiff's Copyrighted Photographs or confusingly similar images; or (iii) any assets or other financial accounts subject to this Order, including inventory assets, in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, any Defendant, including, but not limited to, any assets held by or on behalf of any Defendant; and

- c. From copying, displaying, distributing, or creating derivative works of Plaintiff's copyright.

2. Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue, until further Order of this Court, the use of Plaintiff's Copyrighted Photographs or confusingly similar images, on or in connection with all Internet-based e-commerce stores owned and operated or controlled by them, including those operating under the Seller IDs. This Order is limited to the Defendants' listings using Plaintiff's Copyrighted Photographs or confusingly similar images, on or in connection with all Internet-based e-commerce stores owned and operated, or controlled by them, including the Internet-based e-commerce stores operating under the Seller IDs, and does not apply to the Defendants' entire e-commerce stores.

3. Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue, until further Order of this Court, the use of Plaintiff's Copyrighted Photographs or confusingly similar images, from use on any webpage (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms that are visible to a computer or user or serves to direct computer searches to Internet-based e-commerce stores registered, owned, or operated by any Defendant, including the Internet-based e-commerce stores operating under the Seller IDs.

4. Each Defendant shall not transfer ownership of the Seller IDs during the pendency of this action, or until further order of the Court.

5. Each Defendant shall continue to preserve copies of all computer files relating to the use of any of the Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Seller IDs that may have been deleted before the entry of this Order.

6. Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, and marketplace platforms, including but not limited to, Amazon.com and/or Amazon Payments, Inc. (“Amazon”), eBay.com (“eBay”), PayPal, Inc. and/or PayPal Holdings, Inc. (“PayPal”), Payoneer, Inc. (“Payoneer”), LianLian, Klarna, Stripe, Inc. and/or Stripe Payments Company (“Stripe”), Walmart.com (“Walmart”), and their related companies and affiliates shall, to the extent not already done, (i) immediately identify all financial accounts and/or sub-accounts, associated with the Internet-based e-commerce stores operating under the Seller IDs, store numbers, infringing product numbers, and/or the e-mail addresses identified on Schedule “A” to the Complaint, as well as any other accounts of the same customer(s); (ii) identify all other accounts which transfer funds into the same financial institution account(s) or any of the other financial accounts subject to this Order; (iii) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for the Defendants’ benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; and (iv) immediately divert those restrained funds to a holding account for the trust of the Court.

7. Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms receiving notice of this Order, including but not limited to those listed above, shall, to the extent not already done, provide Plaintiff’s counsel with all data that details: (i) an accounting of the total funds restrained and identify the financial account(s) and sub-account(s) to which the restrained funds are related; (ii) the account transactions related to all funds transmitted into the financial account(s) and sub-account(s) which have been restrained; (iii) the historical sales for the Defendants’ listings that are alleged to infringe Plaintiff’s copyrights; and (iv) the true identities along with complete contact information including email addresses of all Defendants.

8. No funds restrained by this Order shall be transferred or surrendered by any Defendant, financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of this Court.

9. No Defendant whose funds are restrained by this Order may transfer said funds in possession of any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website restrained by this Order to any other financial institution, payment processor, bank, escrow service, money transmitter or marketplace website without the express authorization of this Court.

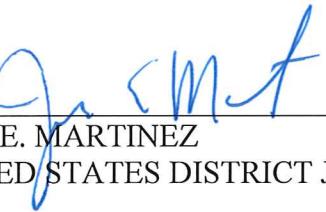
10. Any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order.

11. This Order shall apply to the Seller IDs listed in both Schedule A to the Complaint and Exhibit 1 attached to the R&R, associated e-commerce stores and websites, and any other seller identification names, e-commerce stores, websites, or financial accounts which are being used by Defendants for the purpose of copying or using in any way Plaintiff's Copyrighted Photographs.

12. This Preliminary Injunction shall remain in effect during the pendency of this action, or until such other dates as may be set by the Court.

13. Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 65(c), the Plaintiff shall maintain its previously posted bond (ECF No. 20) in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment for damages to which Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further Order of the Court.

DONE AND ORDERED in Chambers at Miami, Florida, this 3 day of May, 2024.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Sanchez
All Counsel of Record